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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.10 OF 1982

The Special Land Acquisition
Officer (7)

AND

Shri Ghanshamdas Lalchand
since deceased through
1.A. Gopaldas Ghanshamdas & Ors. ... Claimants

V/s.

The Muncipal Corporation of
Greater Bombay ... Acquiring Boday

Mr.Milind Jadhav with Ms.S.Patra for Claimants
Mr.R.T. Walawalkar with Mr.H.C. Pimple for Acquiring Body
Mr.P.G. Lad, AGP, for SLAO

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **NOVEMBER 30, 2005**
JUDGMENT PRONOUNCED ON: **MARCH 7, 2006**

JUDGMENT:

. This is a Land Acquisition Reference under section 18 of the Land Acquisition Act, 1894. The claimants seek enhancement in the compensation awarded by the Special Land Acquisition Officer (for short, 'SLAO') by his award dated 29.12.1981. The rate awarded to the claimants is Rs.140 per sq.mtr.

2. The Claimants are the owners of a land bearing Survey Nos.123 X 1 and 839 X 1. These lands are situate in Ambivali Village about a mile away from Andheri Railway station and about 2 miles from Versova beach. The land admeasures 5638.5 sq.mtrs. By a notification dated 7.7.1980 issued under section 126 (2) r/w 126(4) of the Maharashtra Regional Town Planning Act, 1966 (for

short, MRTP Act) the land was acquired for a cemetery. The Claimants have sought enhancement on the ground that they are entitled to a much higher valuation for the land than what has been awarded by the SLAO. The claimants have based their claim on the ground that other lands in the vicinity have fetched a much higher rate. The claimants also have relied on the award of this Court dated 29.8.1994 in L.A.R. Nos.11/1980, 12/1980 and 15/1983, in what is known as the Chinai land's case as well as the valuation report submitted by the claimants' valuer.

3. Besides one of the claimants being examined, the claimants have also led evidence of their valuer who has relied on two sale instances while preparing the valuation report. Both these witnesses have been cross-examined extensively by the acquiring body, the Municipal Corporation of Greater Bombay. The claimant Ranchhoddas Ghansyamdas Hinduja has deposed that the land belonged to his late father Ghanshamdas Lalchand and himself. He has further deposed that he had claimed compensation @Rs.800 per sq.mtr. There are six structures and 79 tenants staying on the acquired land after acquisition. No developmental in change has been made in the land by the Municipal Corporation, which is collecting the rent from the squatters. In his cross-examination, the claimant has deposed that he has taken no action to evict the squatters. The valuer who has been examined has deposed in his

examination-in-chief by way of an affidavit that he has considered the proximity of the land in question to the Andheri Railway Station and the access to the J.P. Road. The land acquired is partially levelled according to the valuer and does not require much filling. All other facilities like markets, transportation etc. are available in the vicinity. The valuer has, therefore, deposed that considering the two sale instances, the claimants are entitled to a higher rate. The valuer has placed reliance on the agreement of sale dated 1.12.1980 which is the sale instance of a flat. A photocopy of the agreement of sale is on record. The valuer has also relied upon the judgment of this Court in L.A.R. Nos.11/1980, 12/1980 and 15/1983 in respect of the adjacent lands that is survey No.105 (part), 122-A (part) and 123 (part) referred to as the Chinai land. On this basis, the valuer had calculated that the claimants are entitled to a valuation of the land @Rs.380/- per sq.mtr. The valuer has admitted, however, in his cross-examination, that he has not taken into consideration the fact that there were squatters on the land while valuing the property. The valuer has admitted that if the unauthorised encroachments on the land were taken into consideration, the valuation arrived at by him would have to be reduced. He has further admitted that about 1000 sq.m. of the acquired land was occupied by these encroachers and, therefore, about 1/5th of the total land was encumbered. According to the Valuer, a deduction of 30% to 50% should be

considered for the encumbered land and the remaining land should be valued at 380 per sq.mtr.

4. Although the claimants have claimed an amount of Rs.800/- per sq.mtr. for the acquired land, during the course of arguments, the learned Counsel for the claimants has reduced the claim to Rs.385/- per sq.mtr. for the unencumbered land and 30% of that value for 1000 sq.mtr. which is unauthorisedly encroached. The Claimants have, therefore, sought compensation of Rs.20,55,322 besides other benefits like solatium, interest, etc. The learned Counsel for the Claimants has submitted that the evidence on record establishes the fact that the compensation awarded by the SLAO was much less than the value of the land in the vicinity. He submits that the acquisition of the Chinai land and the award of this Court made in respect of that land should be followed in the present case. He also submits that the structures on the acquired land are not authorised and, therefore, the question of payment of any compensation to them does not arise. He points out that since they are unauthorised structures, the occupants have no vested right to remain on the acquired land. Besides this, the learned Counsel urges that the only material on record for this Court to draw any conclusion is the evidence led by the claimants since the acquiring body has chosen not to lead any evidence in rebuttal.

5. The learned Counsel relies on the judgments in *State of Madras v/s. A.M. Nanjan*, **AIR 1976 SC 651;** *Krishna Y.Bahadurvaru v/s. SLAO,* **AIR 1979 SC 869;** *LAO v/s. A.Krishnamurthy Patnaik,* **AIR 1984 ORISSA 6;** *Collector of Nagpur v/s. Atmaram Bhagwant*, **AIR 1925 NAGPUR 292**; *Jairamsingh v/s. Union of India,* **AIR 1989 DELHI 310**; *Madanmohan v/s. Secretary of State,* **AIR 1929 CALCUTTA 481;** *State of Kerala v/s. V.Ponnama,* **AIR 1985 KERALA 1 (DB);** *M/s.Printers House Pvt. Ltd. v/s. Saiyadal,* **AIR 1994 SC 1160**; *Ranganath Babu Bhote & Anr. v/s. State of Maharashtra,* **1999(1) Mh.L.J. 312;** *State of Bihar v/s. S.K. Thacker & Ors.*, **AIR 1981 PATNA 81**; *CIT v/s. Sumatilal Chhotalal Shah,* **ITR Vol.124-862**.

6. The learned Counsel for the Acquiring Body submits that it was not necessary for the Acquiring Body to lead any evidence since the Claimants had failed to prove their claim. The learned Counsel points out that the valuation report submitted by the Valuer of the Claimants cannot be relied upon since it does not take into consideration the encroachments on the land. He submits that although in the cross-examination the Valuer has admitted that there are encroachments for which about 30% to 50% of the valuation would be reduced, such a valuation would not be proper. He urges that 1000 sq.mtrs. which are encroached upon are not necessarily in one pocket or in one contiguous area. The encroachers may be spread over the entire land in which case it would be impossible for the claimants to

justify their claim. He submits by relying on the Privy Council judgment in the case of *Florence A. Deeks v/s. H.G. Wells & Ors.*, **AIR 1933 Privy Council 26** that the Valuer has no business to opine on the value of the lands as he is not an expert witness. He submits by relying on the judgment that it is not the province of the Act as a Judge of Jury. According to the learned Counsel, the expert witness int he present case that is the Valuer has given his opinion which it has been held by judicial pronouncement is not within the province of the expert witness. He submits that it would not be proper to reduce 30% to 50% of the value for a contiguous area of 1000 sq.mtrs. in view of the fact that there is no material on record to indicate where exactly the unauthorised structures were situated. He, therefore, submits that the award be upheld. The learned Counsel then urges that the structures have been censused and therefore the occupants could set up a claim for adverse possession. He contends that there is no comparison between the acquired land and the Chinai Land which was unencumbered. No steps having been taken by the claimants to evict the encroachers, the cost of evicting them would have to be borne in mind while awarding compensation.

7. The agreement for sale of a flat dated 1.12.1980 which has been considered as the first sale instance by the Valuer cannot be taken into consideration as the Original document was not brought on record. Therefore,

this sale instances would have to be discarded. As regards the second sale instance, the Claimants have relied on the award of this Court dated 29.8.1994 in the Chinai lands' case that is in L.A.R. Nos.11/1980, 12/1980 and 15/1983. The SLAO had relied on the award passed by him in respect of Chinai lands. This Court had enhanced the compensation awarded in respect of those lands by about Rs.100/- to Rs.200/- per sq.mtr. However, in the Chinai lands' case, the Acquiring Body had led evidence of their expert valuer in rebuttal. In the present case, the Acquiring Body has chosen not to lead any evidence. Therefore, one will have to consider whether the valuation report submitted by the Claimants' valuer can be relied upon. The Valuer has arrived at a figure based on the two sale instances one of which will have to be discarded as aforesaid. The Chinai lands' case has also been relied on by the Valuer. The present lands are almost adjacent to the Chinai lands and therefore, the same valuation could be considered as was granted in the case of Chinai lands. However, there are certain factors which will have to be borne in mind while considering whether the same valuation as was granted in the case of Chinai lands could be a basis for granting compensation in the present case. There is a proposed access from the J.P. Road. The land is almost levelled and it does not require much filling. Civic amenities are also available within a radius of 500 mtrs. However, the shape of the land is triangular which would, therefore, decrease its value. Another

disadvantage in respect of the acquired land is that there are six unauthorised structures occupied by the 79 persons. Therefore, as rightly deposed by the Valuer, the value of the property will diminish. The submission of the learned Counsel for the Acquiring Body that there was no material on record to indicate as to where exactly the structures were situate on the lands is of no avail. It was necessary for the Acquiring Body to show that the structures occupied the land in such a manner that it would be impossible to develop the land and that the land would fetch no more than the rate awarded by the SLAO. Whether the encroachments are located at one of the vertices of the triangular land or elsewhere is a fact which the Acquiring Body ought to have brought on record to establish their case before the Court. The Acquiring Body not having done so, cannot take any undue advantage of the fact that the Valuer had not taken into account the encroachments while submitting his valuation report. The Valuer has in his cross examination admitted to the fact that about 1000 sq.mtrs. is occupied by the encroachers and has, therefore, reduced the value of this area by 30% to 50%. The further submission of the learned Counsel for the Acquiring Body that the Valuer deposed as to the result of his opinion and as to the effect of his opinion which does not fall within the domain of the evidence of an expert witness is untenable. A perusal of the evidence of the Valuer indicates that his evidence is not as to any given question but in fact his valuation report is

such that would assist the Court to draw its own conclusions regarding the valuation of the land.

8. In my opinion, the base rate of the acquired land as on 31.12.1980 could be taken as Rs.205/- per sq.mtr. This is an average of the rate awarded by the Court in respect of three Chinai lands. Taking this as a base value and considering the deductions which should be made in respect of access and the shape of the land and also taking into account appreciation in land prices, I am of the view that the vacant land which is available should be valued at Rs.385/- per sq.mtr. The encroached area of 1000 sq.mtrs. must be valued at 50% less than the vacant land. In my view, therefore, the compensation payable would have to be computed as follows:

A)	Compensation awarded by SLAO	
	a) for land:	
	5638.5 sq.mtrs X 140 p.s.m.	7,69,390.00
	b) Solatium received (15%)	1,18,408.50
	Total	9,07,798.50
B)	Compensation awarded by Court:	
	a) for land:	
	4638.5 sq.mtrs X 385 p.s.m.	17,85,822.50
	b) for land:	
	1000 sq.mtrs. X 192.5 p.s.m.	1,92,500.00
		19,78,322.50
	c) Solatium (30%)	5,93,496.75
	Total	25,71,819.25
C)	Additional Compensation payable (B - A)	16,64,020.75

In addition to the above, the Claimants will also be entitled to interest under section 28 of the Land Acquisition Act.

9. The learned Advocate appearing for the Municipal Corporation, the Acquiring Body, seeks stay of this order for 12 weeks. Stay granted for 12 weeks from today.